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c 52 The Small Claims Courts Amendment Act, 1977

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CHAPTER 52

An Act to amend The Small Claims Courts Act*Assented to November 25th, 1977*

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Subsection 1 of section 1 of *The Small Claims Courts Act*, s.1 (1),
being chapter 439 of the Revised Statutes of Ontario, 1970,
is amended by adding thereto the following clause:

(la) "registered mail" includes certified mail where
evidence of delivery is returned to the sender.

2. Section 11 of the said Act is repealed and the following sub- s.11,
stituted therefor: re-enacted

11.—(1) The Lieutenant Governor in Council on the recom- Appointment
mendation of the Attorney General may appoint such small of judges
claims court judges as are considered necessary.

(2) Every judge appointed under this section shall take Oath
and subscribe the following oath before the Chief Judge of
the County and District Courts or a judge designated by
him:

I,,
do swear that I will truly and faithfully, according to my skill and
knowledge, execute the several duties, powers and trusts of the
Small Claims Courts, so help me God.

and also the oath of allegiance as required by *The Public R.S.O. 1970,
Officers Act*. c.382

(3) The oath of office and oath of allegiance shall be Filing of
transmitted forthwith to the Inspector and shall be filed in his oaths
office.

(4) A judge appointed under this section may be removed Removal
from office before attaining retirement age only for mis- for cause
behaviour or for inability to perform his duties properly
and only if,

(a) the circumstances respecting the misbehaviour or inability are first inquired into; and

(b) the judge is given reasonable notice of the time and place for the inquiry and is afforded an opportunity, by himself or his counsel, of being heard and of cross-examining the witnesses and of producing evidence on his own behalf.

Inquiry

(5) For the purpose of making an inquiry under subsection 4, the Lieutenant Governor in Council may appoint one or more judges of the Supreme Court who shall make the inquiry and report thereon, and a judge so appointed has the powers of a Commission under Part II of *The Public Inquiries Act, 1971*, which Part applies to such inquiry as if it were an inquiry under that Act.

1971, c. 49

Order for removal

(6) An order removing a judge from office under this section may be made by the Lieutenant Governor in Council and the order and the report of the inquiry shall be laid before the Legislative Assembly if it is in session or, if not, within fifteen days after the commencement of the next ensuing session.

Retirement

11a.—(1) Every judge appointed under section 11 shall retire upon attaining the age of sixty-five years.

Reappointment

(2) Upon attaining the age for retirement under subsection 1, a judge may be reappointed to hold office during pleasure but shall not hold office after attaining the age of seventy-five years.

Resignation

(3) A judge may at any time resign his office in writing, signed by him and delivered to the Attorney General.

Judicial Council

11b. The Judicial Council for Provincial Judges has the same powers and shall perform the same duties in respect of small claims court judges appointed under section 11 as it has and performs under *The Provincial Courts Act* in respect of provincial judges.

R.S.O. 1970,
c. 369

s. 18, amended

3. Section 18 of the said Act is amended by adding thereto the following subsection:

Referees

(2) The Lieutenant Governor may appoint a referee for each small claims court who shall hold office during pleasure.

4. Clauses *a* and *b* of section 54 of the said Act are repealed <sup>s. 54 (a, b),
re-enacted</sup> and the following substituted therefor:

(a) any action where the amount claimed does not exceed \$1,000 exclusive of interest;

(b) any action of replevin where the value of property distrained, taken or detained does not exceed \$1,000; and

- 5.—(1) The said Act is amended by adding thereto the following <sup>s. 54a,
enacted</sup> section:

54a.—(1) In this section, “prime rate” means the lowest <sup>Prime
rate
defined</sup> rate of interest quoted by chartered banks to the most credit-worthy borrowers for prime business loans, as determined and published by the Bank of Canada.

(2) For the purposes of establishing the prime rate, the ^{Idem} periodic publication entitled the Bank of Canada Review purporting to be published by the Bank of Canada is admissible in evidence as conclusive proof of the prime rate as set out therein, without further proof of the authenticity of the publication.

(3) Subject to subsection 6, a person who is entitled to a <sup>Prejudgment
interest</sup> judgment for the payment of money is entitled to claim and have included in the judgment an award of interest thereon,

(a) at the prime rate existing for the month preceding the month on which the action was commenced; and

(b) calculated,

(i) where the judgment is given upon a liquidated claim, from the date the cause of action arose to the date of the judgment, or

(ii) where the judgment is given upon an unliquidated claim, from the date the person entitled gave notice in writing of his claim to the person liable therefor to the date of the judgment.

(4) Where the judgment includes an amount for special <sup>Special
damages</sup> damages, the interest calculated under subsection 3 shall be calculated on the balance of special damages incurred as totalled at the end of each six month period following the

notice in writing referred to in subclause ii of clause *b* of subsection 3 and at the date of the judgment.

Exclusions

- (5) Interest under this section shall not be awarded,
- (a) on exemplary or punitive damages;
 - (b) on interest accruing under this section;
 - (c) on an award of costs in the action;
 - (d) on that part of the judgment that represents pecuniary loss arising after the date of the judgment and that is identified by a finding of the court;
 - (e) except by consent of the judgment debtor, where the judgment is given on consent; or
 - (f) where interest is payable by a right other than under this section.

Discretion of judge

- (6) The judge may, where he considers it to be just to do so in all the circumstances,
- (a) disallow interest under this section;
 - (b) fix a rate of interest higher or lower than the prime rate;
 - (c) allow interest under this section for a period other than that provided,

in respect of the whole or any part of the amount for which judgment is given.

Application of subs. 1

- (2) This section applies to the payment of money under judgments delivered after this section comes into force, but no interest shall be awarded under this section for a period before this section comes into force.

s. 69. repealed

- 6.—(1) Section 69 of the said Act is repealed.

Application of subs. 1

- (2) Subsection 1 does not apply in respect of actions commenced before subsection 1 comes into force.

s. 96a. enacted

7. The said Act is further amended by adding thereto the following section:

What is admissible in evidence at a hearing

96a.—(1) Subject to subsections 2 and 3, the judge may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in the Supreme Court,

(a) any oral testimony; and

(b) any document or other thing,

relevant to the subject-matter of the proceedings and may act on such evidence, but the judge may exclude anything unduly repetitious.

(2) Nothing is admissible in evidence at a hearing,

What is
inadmissible
in evidence
at a
hearing

(a) that would be inadmissible by reason of any privilege under the law of evidence; or

(b) that is inadmissible by any statute.

(3) Nothing in subsection 1 overrides the provisions of any Act expressly limiting the extent to or purposes for which any oral testimony, documents or things may be admitted or used in evidence in any proceedings.

Conflicts

(4) Where the judge is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

Copies

8. Sections 98 and 99 of the said Act are repealed.

ss. 98, 99,
repealed

9.—(1) Subsection 1 of section 104 of the said Act is amended by inserting after "solicitor" in the third line "or student articulated to the solicitor".

s. 104 (1),
amended

(2) Subsection 2 of the said section 104 is amended by inserting after "solicitor" in the third line "or student articulated to the solicitor".

s. 104 (2),
amended

10. Clauses *a* and *b* of subsection 1 of section 108 of the said Act are repealed and the following substituted therefor:

s. 108 (1) (a, b),
re-enacted

(a) in an action or garnishee proceeding where the sum in dispute exceeds \$500, exclusive of costs;

(b) in interpleader where the money or the value of the goods or chattels claimed or proceeds thereof exceed \$500, or where the damages claimed by or awarded to either party against the other or against a bailiff exceeds the sum of \$300.

11. Subsection 1 of section 112 of the said Act, as amended by the Revised Statutes of Ontario, 1970, chapter 439, section 112, subsection 3, is repealed and the following substituted therefor:

s. 112 (1),
re-enacted

Appeal

(1) The appeal shall be made in the time and manner prescribed by the rules of court and the Chief Justice of the High Court may, after the appeal is perfected and where it appears to him that no issue of general interest is raised and that expedition and the interests of the parties would be thereby best served, order that the appeal be heard by a single judge of the Divisional Court and a decision of the judge shall be deemed to be a decision of the Divisional Court.

s. 116,
amended

12. Section 116 of the said Act, as amended by the Statutes of Ontario, 1972, chapter 107, section 4, is further amended by adding thereto the following subsection:

Rate of
interest
after
judgment

(2a) The interest payable under subsection 2 shall be at the same rate as may be levied under a writ of execution issued out of the Supreme Court, but a judge may order that no interest is payable in respect of moneys owing under a consolidation order that is not in default.

s. 131 (5),
amended

13. —(1) Subsection 5 of section 131 of the said Act is amended by inserting after “served” in the first line “by mail or, if directed by the judge,”.

s. 131 (7),
re-enacted

(2) Subsection 7 of the said section 131 is repealed and the following substituted therefor:

Place of
examination

(7) The examination shall not be held in open court unless the judge is satisfied there is good reason to hold it in public.

s. 132 (2),
amended

14. Subsection 2 of section 132 of the said Act is amended by inserting after “served” in the first line “by mail or, if directed by the judge,”.

s. 135 (1),
amended

15. Subsection 1 of section 135 of the said Act is amended by striking out “registered mail” in the sixth line and inserting in lieu thereof “mail or served personally as directed by the judge”.

s. 151,
repealed

16. —(1) Section 151 of the said Act is repealed.

Application
of subs. 1

(2) Subsection 1 does not apply in respect of garnishees issued before this section comes into force.

s. 184,
re-enacted

17. Section 184 of the said Act is repealed and the following substituted therefor:

Destruction
of documents

184. Where books, documents or papers have been preserved in a small claims court for so long that it appears that they need not be preserved any longer, the Chief Judge

of the County and District Courts may make an order authorizing the Inspector to cause their destruction or other disposition.

18. Subsection 1 of section 190 of the said Act is repealed. s. 190 (1),
repealed
19. Subsection 2 of section 193 of the said Act is repealed. s. 193 (2),
repealed
- 20.—(1) Clause *aa* of subsection 1 of section 195 of the said Act, as enacted by the Statutes of Ontario, 1972, chapter 107, section 7, is amended by inserting after “clerks” in the first line “referees”. s. 195 (1) (aa),
amended

(2) Clause *b* of subsection 1 of the said section 195 is amended by inserting after “clerks” in the first line “referees”. s. 195 (1) (b),
amended

(3) Subsection 1 of the said section 195, as amended by the Statutes of Ontario, 1972, chapter 107, section 7, is further amended by adding thereto the following clauses: s. 195 (1),
amended

 (*da*) prescribing the duties, responsibilities and functions of referees;

 (*db*) fixing the remuneration of judges appointed under section 11 and providing for the benefits to which such judges are entitled, including,

 (i) leave of absence and vacations,

 (ii) sick leave credits and payments in respect of such credits,

 (iii) pension benefits for judges and their widows and surviving children,

and for the transfer or other disposition of benefits in respect thereof to which persons appointed as judges under section 11 were entitled under *The Public Service Act* or *The Public Service Superannuation Act* at the time of their appointment under section 11. R.S.O. 1970,
cc. 386, 387
21. Part II of the said Act, as amended by the Revised Statutes of Ontario, 1970, chapter 439, section 197, subsection 3, is repealed. Part II
(ss. 196-198),
repealed
22. This Act comes into force on the day it receives Royal Assent. Commence-
ment
23. The short title of this Act is *The Small Claims Courts Amendment Act, 1977*. Short title

